

2013 DRAFTING REQUEST

Bill

Received:	2/7/2013	Received By:	mshovers
Wanted:	As time permits	Same as LRB:	
For:	David Murphy (608) 266-7500	By/Representing:	Jon Turke
May Contact:		Drafter:	emueller
Subject:	Local Gov't - counties Local Gov't - misc Local Gov't - munis generally Local Gov't - zoning	Addl. Drafters:	
		Extra Copies:	MES

Submit via email: **YES**
Requester's email: **Rep.Murphy@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Require application of existing regulations to application for building permit or other authorization.

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 2/26/2013			_____			
/P1	emueller 3/13/2013	jdye 3/1/2013	jfrantze 3/1/2013	_____	lparisi 3/1/2013		
/P2	emueller 5/10/2013	jdye 3/18/2013	jmurphy 3/18/2013	_____	srose 3/18/2013		

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/2	emueller 9/6/2013	scalvin 7/3/2013	rschluet 7/3/2013	_____	srose 7/3/2013	mbarman 7/24/2013	
/3	emueller 9/6/2013	kfollett 9/6/2013	rschluet 9/6/2013	_____	srose 9/6/2013	srose 9/6/2013	
/4		kfollett 9/6/2013	jfrantze 9/6/2013	_____	lparisi 9/6/2013	lparisi 9/6/2013	

FE Sent For:

→ Not
Needed

<END>

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/P2	<i>2 VM 3/13/13</i>		<i>gm 3/18</i>	<i>gm 3/18</i>			

FE Sent For:

<END>

Mueller, Eric

From: Kahler, Pam
Sent: Thursday, March 07, 2013 1:31 PM
To: Mueller, Eric
Subject: FW: LRB-1591/P1
Attachments: Amendment to LRB 159.P1.docx

Hi, Eric:

This is for the "vested rights" draft. I replied to Jon that I would forward this to you.

Pam

From: Turke, Jon
Sent: Thursday, March 07, 2013 1:14 PM
To: Kahler, Pam
Subject: LRB-1591/P1

Hi Pam-

I have some answers for your drafter's note. We agree that we don't need to change the law under 236.13.

As far as the bill itself, we wanted to add some detail to the language. Those details you will find attached in the word doc.

Thanks for your work!

Jon Turke
Office of Rep. Jim Steineke
Assistant Majority Leader
608-266-2418

Amendment to LRB – 1591/P1

(2) VESTED RIGHTS – (a) If a person has applied for a building permit or other approval related to residential, commercial or industrial development, the political subdivision shall consider the approval, disapproval, or conditional approval of the application solely on the basis of any regulations, ordinances, rules or other properly adopted requirements in effect at the time the original application for the permit is filed with the political subdivision.

(b) The permit applicant is entitled to the rights which accrue under this section upon the date in which the permit applicant files the original application that gives the political subdivision fair notice of the project and the nature of the permit sought. An application is considered filed on the date the applicant delivers the application to the political subdivision or deposits the application with the United States Postal Service by certified mail addressed to the political subdivision.

(c) If a series of permits is required for a project, the regulations, ordinances, rules or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits.

(d) After an application is filed, a political subdivision may not shorten the duration of any permit required for the related project.

(e) Notwithstanding any provision of this section to the contrary, a permit holder may take advantage of any change to federal, state or local laws, ordinances, rules or regulations that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this section.

(f) A political subdivision may provide that a permit application expires on or after the 60th day after the date the application is filed if:

(1) the permit applicant fails to provide documents or other information necessary to comply with the political subdivision's technical requirements relating to the form and content of the permit application;

(2) the political subdivision provides the permit applicant, no later than the 10th business day after the date the application is filed, with written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the permit applicant fails to provide the specified documents or other information within the time provided in the notice.

(g) A political subdivision is not prohibited from requiring compliance with technical requirements relating to the form and content of the application in effect at the time the date the applicant accrues rights under sub. (a).

(h) This law applies only to a project commenced on or after the effective date of the Act.

Mueller, Eric

From: Turke, Jon
Sent: Monday, March 11, 2013 1:16 PM
To: Mueller, Eric
Subject: RE: Vested rights legislation

Sorry yes you should change the author.

Jon Turke

Office of Rep. Jim Steineke
Assistant Majority Leader
608-266-2418

From: Mueller, Eric
Sent: Monday, March 11, 2013 1:15 PM
To: Turke, Jon
Subject: RE: Vested rights legislation

Jon,

Do you want to change the author of the bill to Rep. Murphy? Or do you mean that I should discuss the bill with him if he has questions or concerns?

Thanks,

Eric Mueller
Attorney, Legislative Reference Bureau
Phone: (608)261-7032
eric.mueller@legis.wisconsin.gov

From: Turke, Jon
Sent: Monday, March 11, 2013 11:59 AM
To: Mueller, Eric
Subject: Vested rights legislation

Hi Eric-

Could you please release our bill to Rep. Murphy?

Thanks!

Jon Turke

Office of Rep. Jim Steineke
Assistant Majority Leader
608-266-2418

2013 DRAFTING REQUEST

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Wanted: **As time permits** Same as LRB:
For: **Jim Steineke (608) 266-2418** By/Representing: **Jon Turke**
May Contact: Drafter: **emueller**
Subject: **Local Gov't - zoning** Addl. Drafters: **pkahler**
Extra Copies: **MES**

Submit via email: **YES**
Requester's email: **Rep.Steineke@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Codify case law that vests a property owner's right to existing zoning regulations upon application for building permit

Instructions:

See attached. Codify Lake Bluff Housing Partners v. City of Milwaukee, 197 Wis. 2d 157 (1995).
See also s. 236.13 (1) (b)

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/P1	emueller 2/27/13						

FE Sent For:

<END>

Shovers, Marc

From: Turke, Jon
Sent: Thursday, February 07, 2013 2:09 PM
To: Shovers, Marc
Subject: RE: drafting request relating to vested rights to zoning, permit applications

Hi Marc-

Lake Bluff Housing Partners v. City of S. Milwaukee, 197 Wis.2d 157, 172 -73, 540 N.W.2d 189, 195-96 (1995). This case provides a great discussion of vested rights law and best highlights what we are trying to do.

Jon Turke

Office of Rep. Jim Steineke
Assistant Majority Leader
608-266-2418

From: Shovers, Marc
Sent: Thursday, February 07, 2013 11:56 AM
To: Turke, Jon
Cc: Mueller, Eric; Kahler, Pam
Subject: drafting request relating to vested rights to zoning, permit applications

Hi Jon:

Mike Gallagher forwarded this email to me:

Hi Michael-

We're wondering if we can get 2011 AB 612 redrafted for this year.

Also, we would like to draft a bill related to vested rights. Right now, a property owner's vested right to zoning is found in case law, not in the state statutes. Additionally, the law is silent as to when a property owner's rights vest with respect to future changes in other types of development regulations and permit requirements at the local level. We would like to clarify that changes to any local land-use regulations cannot be applied to permit applications that have been submitted prior to the effective date of those changes.

Thanks!

Jon Turke

Office of Rep. Jim Steineke
Assistant Majority Leader
608-266-2418

I may be the attorney to draft the bill related to vested rights, but I'm not sure to what vested rights, development regulations, or permit applications you're referring. Perhaps if you could forward to me some citations of the court cases you've referenced (*a property owner's vested right to zoning is found in case law, not in the state statutes*) I'd have a better idea of the problem you're trying to solve. Also, there's a statute that may address the problem you're concerned about. It's s. 236.13 (1) (b), stats.:

236.13(1)

(1) (intro.) Approval of the preliminary or final plat shall be conditioned upon compliance with:

236.13(1)(a)

(a) The provisions of this chapter;

236.13(1)(b)

(b) Any municipal, town, or county ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted;

Any more information you could provide about vested rights, the cases you've referred to, and the development regulations and permit applications you're concerned about would be a big help.
Thanks.

Marc

Marc Shovers
Managing Attorney
Legislative Reference Bureau
608-266-0129
marc.shovers@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1591/P1
EVM&PJK:.....

rm
JLd

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(in 2-27)

1- 2/27/13

Soon

1 AN ACT [✓]; relating to: effect of [✓]amendments to zoning ordinances on persons
2 who apply for building permits. [✓]

Analysis by the Legislative Reference Bureau

Under this bill, if a person has applied for a building permit and the permit conforms to existing zoning and building code requirements, any new zoning ordinance or amendment to a zoning ordinance by a [✓]city, village, town, or county political subdivision that takes effect after the date on which the person applies for the building permit does not apply to the lands to which the building permit relates.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 66.10015 [✓] of the statutes is created to read:

4 66.10015 [✓] Limitation on zoning regulation authority. (1) [✓] DEFINITIONS. In
5 this section: [✓]

6 (a) "Political subdivision" means a city, village, town, or county. [✓]

1 (b) "Zoning ordinance" means any ordinance that is enacted or amended under
2 s. 59.69, 60.61, 60.62, 61.35, or 62.23 (7), or any regulation that relates to such an
3 ordinance.

4 (2) VESTED RIGHTS. If a person has applied for a building permit and the permit
5 conforms to zoning and building code requirements that are in effect on the date on
6 which the person applies for the building permit, any amendment to a zoning
7 ordinance, or new zoning ordinance, ^{that is} enacted by a political subdivision ^{and} that takes
8 effect after the date on which the person applies for the building permit does not
9 apply to the lands to which the building permit relates.

10 **SECTION 2. Initial applicability.**

11 (1) This act first applies to a permit application that is submitted for approval
12 on the effective date of this subsection.

13 (END)

Date

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1591/P1dn

PJK:.....

date

jld

There was some question about whether a provision similar to proposed s. 66.10015 (2) needs to be drafted for plats under ch. 236. Section 236.13, in current law, sets out the bases for approval of plats. Section 236.13 (1) (b) requires an approving authority to condition approval of a preliminary or final plat on any ordinance that is *in effect when the plat is submitted*, and s. 236.13 (3) prohibits an approving authority from conditioning approval on any requirement not specified in s. 236.13. In my opinion, that provision is sufficient; however, let me know if you think anything more needs to be added for plats.

*

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1591/P1dn
PJK:jld:jf

March 1, 2013

There was some question about whether a provision similar to proposed s. 66.10015 (2) needs to be drafted for plats under ch. 236. Section 236.13, in current law, sets out the bases for approval of plats. Section 236.13 (1) (b) requires an approving authority to condition approval of a preliminary or final plat on any ordinance that is *in effect when the plat is submitted*, and s. 236.13 (3) prohibits an approving authority from conditioning approval on any requirement not specified in s. 236.13. In my opinion, that provision is sufficient; however, let me know if you think anything more needs to be added for plats.

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1591/P1
EVM&PJK:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMK

INSERTS

In 3/13/13

Soan

changes in requirements
for building permits and
other development-related
approvals

Rege

- 1 AN ACT to create 66.10015 of the statutes; relating to: effect of new zoning
- 2 ordinances and amendments to zoning ordinances on persons who apply for
- 3 building permits or approvals

Analysis by the Legislative Reference Bureau

Under this bill, if a person has applied for a building permit and the permit conforms to existing zoning and building code requirements, any new zoning ordinance or amendment to a zoning ordinance by a city, village, town, or county that takes effect after the date on which the person applies for the building permit does not apply to the lands to which the building permit relates.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 4 SECTION 1. 66.10015 of the statutes is created to read:
- 5 66.10015 Limitation on zoning regulation authority. (1) DEFINITIONS. In

this section:

- (a) "Political subdivision" means a city, village, town, or county.

(b) "Zoning ordinance" means any ordinance that is enacted or amended under s. 59.69, 60.61, 60.62, 61.35, or 62.23 (7), or any regulation that relates to such an ordinance.

(2) VESTED RIGHTS. If a person has applied for a building permit and the permit conforms to zoning and building code requirements that are in effect on the date on which the person applies for the building permit, any amendment to a zoning ordinance, or new zoning ordinance, that is enacted by a political subdivision and that takes effect after the date on which the person applies for the building permit does not apply to the lands to which the building permit relates.

SECTION 2. Initial applicability.

(1) This act first applies to a permit application that is submitted for approval on the effective date of this subsection.

(END)

D-note
fma

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1591/P2ins
EVM:jld:jf

1 INS 1-7

2
3 (a) "Approval" means a building permit or other approval related to residential,
4 commercial, or industrial development.✓

5 (b) ✓ "Existing requirements" means regulations, ordinances, rules, or other
6 properly adopted requirements in effect at the time of the application for an
7 approval.✓

8
9 INS 2-10

10
11 (2) (a) Except as provided in pars. (b)✓ and (c)✓, if a person has applied for an
12 approval and the application provides the political subdivision✓ with fair notice of the
13 project and the nature of the permit sought, the political subdivision shall approve,
14 disapprove, or conditionally approve the application solely based on existing
15 requirements.✓ An application is filed under this✓ section on the date that the
16 applicant delivers the application to the political subdivision or deposits the
17 application with the U. S. ~~Postal Service~~ for mailing by certified mail in an envelope
18 addressed to the political subdivision.✓

19 (b) Except as provided in par. (c)✓, if a project requires more than one approval,
20 the existing requirements applicable at the time of filing the application for the first
21 approval required for the project shall be applicable to all subsequent approvals
22 required for the project.✓ If a project requires more than one approval, a political

↓

subdivision[✓] may not shorten the duration of any approval required for the project after the first application for approval is filed.[✓]

(c) An applicant for an approval may waive the requirements of this[✓] section with regard to a particular change in existing requirements without forfeiting the application of this section[✓] to any other existing requirement.[✓]

(d) A political subdivision[✓] may provide that an application for an approval expires not less than 60[✓] days after filing if all of the following apply:[✓]

1. The application does not comply with form and content requirements.[✓]

2. Not more than 10[✓] days after filing, the political subdivision provides the applicant with written notice of the noncompliance. The notice shall specify the nature of the noncompliance and the date[✓] on which the application will expire if the noncompliance is not remedied.[✓]

3. The applicant fails to remedy the noncompliance before the date provided in the notice.[✓]

(end ins)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1591/P2dn
EVM:jld:jf

date

ATTN: Rep. Dave Murphy✓

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in your review of this draft.

- * 1. I have added several definitions to this draft. "approval" meaning a building permit or other approval related to residential, commercial, or industrial development, and "existing requirement" meaning regulations, ordinances, rules, or other properly adopted requirements in effect at the time of the original application for an approval. These definitions retain much of the functional language of pars. (a) and (b) of the provided material. Both of these definitions appear broad, but quite vague. It is difficult to determine with any precision how these terms will be interpreted in the real world. Do you wish to provide any additional detail?✓
2. The provided language specifies that the political subdivision shall consider "the approval, disapproval, or conditional approval of the application" based on existing requirements. Is this intended to mean that only only approvals, disapprovals, or conditional approvals are covered and other potential dispositions are not covered? Is this intended to mean a political subdivision may only approve, disapprove, or conditionally approve an application? If you want a broad application, "the political subdivision may consider the application based on only ..." might be less ambiguous. See, e.g., the similar treatment in s. 236.13.*
3. The use of "original application" in the provided material is a little ambiguous. I understand the term to mean the initially filed application even if some additional material or amendment is necessary after the initial filing. Is this correct? I have omitted the use of "original application," but I believe the draft has the effect described above. If you believe additional clarification is necessary, you may wish to consider specifying more explicitly that an application that meets a certain standard remains covered until the political subdivision takes a specified action.✓
4. The "fair notice" requirement in s. 66.10015 (2) (a) of this draft is ambiguous. Do you wish to clarify what elements are required to provide proper notice of the project?✓
5. In regards to the multiple approvals provision in s. 66.10015 (2) (b) of the draft, will it be apparent at the outset when something is a project that requires multiple approvals? If not, you may wish to consider adding clarifying language.✓

6. On a number of occasions, the provided language references only permits. In each instance, I have included other approvals.✓ Please let me know if this is not what you intend.

7. I substantially rewrote the material at par. (e)✓ of the provided material. Please let me know if s. 66.10015 (2) (c)✓ of the draft does not meet your intent.

8. Do you want the application expiration authority to be exercised in a particular way? For example, should a political subdivision be required to enact an ordinance?

9. This draft omits the material at par. (g) of the provided material. What is the intent of this provision? Does it have any effect beyond that specified in existing law and s. 66.10015 (2) (d)✓ of the draft?

10. This draft does not include any change related to par. (h)✓ of the provided material. The initial applicability provision in this draft applies the changes made in the draft to an application submitted on the effective date of the draft.✓ Is par. (h) of the provided material intended to change the initial applicability provision only with regard to projects that require multiple approvals? Is it intended to change the initial applicability for all applications from date of submission to date of initiation of a project? How is the project initiation date established?

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible “/1” draft.✓

Eric V. Mueller
Legislative Attorney
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E-mail: eric.mueller@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1591/P2dn
EVM:jld:jm

March 18, 2013

ATTN: Rep. Dave Murphy

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in your review of this draft.

1. I have added several definitions to this draft: "approval" meaning a building permit or other approval related to residential, commercial, or industrial development; and "existing requirement" meaning regulations, ordinances, rules, or other properly adopted requirements in effect at the time of the original application for an approval. These definitions retain much of the functional language of pars. (a) and (b) of the provided material. Both of these definitions appear broad, but quite vague. It is difficult to determine with any precision how these terms will be interpreted in the real world. Do you wish to provide any additional detail?
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